Supreme Court
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In the

Supreme Court of the United States

CLACKAMAS GASTROENTEROLOGY ASSOCIATES, P.C.,

Petitioner,

v.

DEBORAH ANNE WELLS,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION, ET AL. AS *AMICI CURIAE* IN SUPPORT OF THE RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

This brief is submitted by *amici* comprised of national membership organizations of attorneys who represent individual plaintiffs in employment discrimination actions, and national law and policy organizations dedicated to advancing and protecting the civil rights of individuals with disabilities.

Amici have expertise and interest in the interpretation of a wide range of federal anti-discrimination statutes, including Title VII, Age Discrimination in Employment Act (ADEA), Employee Retirement Income Security Act (ERISA) and Fair Labor Standards Act (FLSA), as well as the Americans with Disabilities Act (ADA) under which Respondent asserts her claims. Given this expertise and interest, *amici* have previously participated in other significant U.S. Supreme Court cases involving the interpretation of federal anti-discrimination laws and employee rights.

Although this particular case is brought under the ADA, the definition of "employee" at issue in this case is nearly identical to the definition contained in other federal civil rights statutes. *Amici* desire to offer input here because the Court's construction of the definition of "employee" will have a significant impact on the clients and communities they represent. Specifically, the Court

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[1] Pursuant to Supreme Court Rule 37.6, *amici* state that no person or entity other than the *amici curiae*, and their undersigned counsel made a monetary contribution to the preparation or submission of this brief. No attorney for any party authored this brief in whole or in part. Written consent to the filing of this brief has been obtained from the parties in accordance with Supreme Court Rule 37.3(a). Copies of the consent letters have been filed with the Clerk.

will decide whether shareholders in a professional corporation must be counted as "employees" under federal civil rights statutes, and accordingly how the scope of coverage of professional corporations is to be determined under these laws.

In the view of the a*mici*, the effective enforcement of the ADA and other civil rights statutes requires a broad interpretation of coverage consistent with their remedial purposes. The exclusion from statutory coverage of shareholders of professional corporations would be a narrow coverage interpretation inconsistent with statutory purpose. Moreover, the so-called "economic realities test" proposed by the Petitioner and the Government creates unnecessary uncertainty concerning the application of the ADA and promises to result in an inappropriately fact intensive case-by-case inquiry as to the threshold question of statutory coverage. For these reasons, *amici* respectfully request that the Court consider their views when deciding the standard for counting employees who work at professional corporations.

The National Employment Lawyers Association (NELA) and its state and local affiliates have a membership of over 3,000 attorneys, and NELA is the country's only professional membership organization of lawyers who regularly represent employees in labor, employment and civil rights disputes. NELA regularly supports precedent-setting litigation affecting the rights of individuals in the workplace. NELA has filed *amicus curiae* briefs before this Court and numerous courts of appeals regarding the proper interpretation and application of the Americans with Disabilities Act (ADA) to insure that this law is fully enforced and that the rights of workers are fully protected. For example, NELA filed an *amicus curiae* brief in this Court's decision in *University of*

Alabama at Birmingham, Board of Trustees v. Garrett, 531 U.S. 356 (2001).

The Bazelon Center for Mental Health Law (Bazelon Center) is a national public interest organization founded in 1972 to advocate for the rights of individuals with mental disabilities. The Bazelon Center has engaged in litigation, administrative advocacy, and public education to promote equal opportunities for individuals with mental disabilities, including in the workplace. Much of our work involves efforts to remedy disability-based discrimination through enforcement of the ADA.

The Disability Rights Education and Defense Fund, Inc. (DREDF), based in Berkeley, California, is the nation's premier law and policy center dedicated to protecting and advancing the civil rights of people with disabilities. Founded in 1979, DREDF pursues its mission through education, advocacy and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal disability civil rights laws.

The National Association of Protection and Advocacy Systems, Inc. (NAPAS) is the membership organization for the nationwide system of protection and advocacy (P&A) agencies. Located in all 50 states, the District of Columbia, Puerto Rico, and the federal territories, P&As are mandated under various federal statutes to provide legal representation and related advocacy services on behalf of all persons with disabilities in a variety of settings. The P&A system comprises the nation's largest provider of legally based advocacy services for persons with disabilities. NAPAS facilitates coordination of P&A activities and provides training and technical assistance to the P&A network. This case is of particular interest to NAPAS because P&As represent individuals with disabilities in employment discrimination cases.

SUMMARY OF ARGUMENT

This case addresses the standards for determining whether a shareholder of a professional corporation is an employee for purposes of coverage under the ADA. The ADA prohibits a "covered entity" from discriminating against a qualified individual with a disability because of that disability. 42 U.S.C. § 12112(a). A "covered entity" includes an "employer," which is defined as "a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year." 42 U.S.C. § 12111(5)(A). In the court below, Respondent established that Petitioner had 15 or more employees by counting the entity's physician-shareholders, who were actively engaged in their medical practice, as employees. There is no dispute that Petitioner would not be a "covered entity" if these physician-shareholders were counted as partners of the firm.

Courts have followed two competing approaches for analyzing whether shareholders of a professional corporation are employees or partners. The first approach requires consideration of the legal structure of the entity. If the shareholders chose to incorporate their business, they can no longer claim they function as a "partnership." The incorporation renders the business a "covered entity" that is subject to federal laws that prohibit unlawful employment discrimination. This is known as the *Hyland* approach, which will be discussed in more detail below.

The second approach is the economic realities test, which requires courts to examine a number of variables to determine whether the shareholders are controlling the corporation or are under its control. Shareholders who participate in setting firm policy, contribute to its capital and are compensated based on its profits share

the attributes of being partners. These partners are not counted as employees for purposes of establishing coverage as a "covered entity" under various civil rights laws. The economic realities test rejects the legal structure of the organization as a basis for determining if a shareholder is a partner or employee.

In the instant case, the lower court applied the *Hyland* approach because the shareholders voluntarily organized as a corporation. Consequently, the court concluded that Petitioner had 15 or more employees by counting the physician-shareholders, who were actively engaged in the day-to-day business, as employees. The court therefore determined that the Petitioner was a "covered entity" under the ADA.

Petitioner advocates that courts should not consider the corporate structure of their medical practice, but should instead apply an economic realities test to determine if the physician-shareholders are to be counted as employees of their professional corporation. *Amici* maintain that the economic realities test should not be applied to a professional corporation because the shareholders made a voluntary choice to incorporate and thereby accepted the benefits and liabilities which follow from electing to incorporate. Since the Petitioner chose to organize as a corporation, it cannot legally claim it operates as any other type of entity. To allow otherwise would enable professional corporations to take advantage of many liability and tax advantages which are unavailable to entities that operate as true partnerships, while disclaiming the corporate form to evade federal anti-discrimination laws.

If an employer has incorporated, then courts should apply the *Hyland* test to determine the existence of an employer-employee relationship between the shareholder

and the corporation. The elements of an economic realities test will not measure whether a shareholder of a corporation is an "employee" for purposes of coverage under the ADA and other anti-discrimination statutes. However, courts should apply the fact intensive economic realities test when the employer is not a corporation and claims that it operates as a partnership. If the employer asserts it is a partnership, the elements of an economic realities test become more practical to demonstrate that a shareholder has an employment relationship with the entity.

The parties to this case have agreed that the Petitioner had legally incorporated and was operating as a corporation during the relevant time period. The physician-shareholders were also directors who accepted their employment relationships with the corporation by signing employment agreements. Since the corporation chose to retain its physician-shareholders as employees, these individuals must be counted as "employees" for purposes of coverage under the ADA.

ARGUMENT

SHAREHOLDERS OF A PROFESSIONAL CORPORATION ARE "EMPLOYEES" WHEN THE EMPLOYER HAS INCORPORATED AND THE SHAREHOLDERS ASSUME TRADITIONAL EMPLOYEE RESPONSIBILITIES WITHIN THE ORGANIZATION

Under the ADA, a "covered entity" may not discriminate against a qualified individual with a disability on the basis of that disability. 42 U.S.C. § 12112(a). A "covered entity" includes an "employer" defined as "a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year." 42 U.S.C. § 12111(5)(A). An "employee" is defined as "an individual employed by an employer." 42 U.S.C. § 12111(4).

In the courts below, Deborah Anne Wells (Wells or Respondent) argued that Clackamas Gastroenterology Associates, P.C. (Clackamas or Petitioner) employed 15 or more employees by counting the physician-shareholders as employees. In response, Clackamas contended it was not a "covered entity" under the ADA because the physician-shareholders were functioning as partners of a professional corporation and should not be counted as employees. The resolution of the case now hinges on whether the physician-shareholders, who are actively engaged in the day-to-day work of their practice, should be counted as "employees" or "partners." If these shareholders are counted as employees, the number of employees will exceed the number required for ADA coverage. However, if the physician-shareholders are considered partners, Wells cannot demonstrate that Clackamas is a "covered entity" and cannot go forward with her case.

Traditionally, courts have considered two distinct approaches to determine whether a shareholder in a professional corporation is an "employee." Under the first approach, the legal structure of the entity dictates whether a shareholder, when that shareholder is actively involved in the daily operations of the corporation, is an "employee." The substantive legal obligations of the employer follow from its decision to incorporate. If a group of professionals choose to incorporate, they cannot later claim they are a partnership to shield the corporation from liability related to unlawful employment discrimination. The use of the corporate structure precludes the corporation from asserting it is a partnership when a federal anti-discrimination lawsuit is filed. The first

approach was adopted by the majority opinion below. *Wells v. Clackamas Gastroenterology Assoc.*, 271 F.3d 903 (9th Cir. 2001). *See also Hyland v. New Haven Radiology Assoc.*, 794 F.2d 793 (2nd Cir. 1986).

The second approach requires that courts ignore the legal structure of the business and determine whether an individual functions more like a partner of the entity. Known as the "economic realities test," courts look at the extent to which shareholders manage and own the entity. Under the economic realities test, shareholders are not counted as "employees" if they participate in setting firm policy, contribute to the firm's capital, are liable for debts and are compensated based on its profits. *Devine v. Stone, Leyton & Gershman, P.C.*, 100 F.3d 78, 80-81 (8th Cir. 1996), *cert. denied*, 520 U.S. 1211 (1997); *Simpson v. Ernst & Young*, 100 F.3d 436 (6th Cir. 1996), *cert. denied*, 520 U.S. 1248 (1997); *Serapion v. Martinez*, 119 F.3d 982, 987 (1st Cir. 1997), *cert. denied*, 522 U.S. 1047 (1998). Under these circumstances, the shareholders are treated as partners, and partners may not be counted as "employees" for purposes of establishing an entity's coverage under the ADA and other federal anti-discrimination statutes. *Hishon v. King & Spalding*, 467 U.S. 69 (1984). This second approach was adopted by the dissenting opinion below. *Wells*, 271 F.3d at 906.

Courts applying the "economic realities" analysis consider multiple factors to determine whether an individual is a partner or an employee. These courts ignore the organization's voluntarily adopted legal structure and look at the facts of each particular case to determine whether a partner is functioning as an employee of the partnership. *Fountain v. Metcalf, Zima & Co.*, 925 F.2d 1398, 1400-01 (11th Cir. 1991); *Serapion*, 119 F.3d at 987.

Courts adopting the *Hyland* test reject the economic realities test because it fails to consider the voluntary choice and legal commitment made by the shareholders to organize the entity as a corporation. In *Hyland*, the Second Circuit recognized that many professional corporations have the attributes of partnerships but may, nevertheless, elect to organize as corporations to take advantage of important tax and employee benefits that are not otherwise available to partnerships. *Hyland v. New Haven Radiology Assoc.*, 794 F.2d 793, 798 (2nd Cir. 1986). In addition, the shareholders of a professional corporation may choose the form of a corporation to avoid personal liability for the wrongful acts of the corporation. "Because the decision to incorporate is presumably a voluntary one, there is no reason to permit a professional corporation to secure the 'best of both worlds' by allowing it to assert its corporate status in order to reap the tax and civil liability advantages and to argue that it is like a partnership in order to avoid liability for unlawful employment discrimination." *Wells v. Clackamas Gastroenterology Assoc.*, 271 F.3d 903, 905 (9th Cir. 2001).

Despite the advantages and disadvantages of both approaches, courts have split on whether to apply either test to a professional corporation. In some instances, the *Hyland* approach is applied to evaluate whether a shareholder is an employee of a professional corporation. *EEOC v. Johnson & Higgins, Inc.*, 91 F.3d 1529 (2nd Cir. 1996). In other instances, courts apply the economic realities test to make that determination. *Devine v. Stone, Leyton & Gershman, P.C.*, 100 F.3d 78 (8th Cir. 1996), *cert. denied*, 520 U.S. 1211 (1997); *Fountain v. Metcalf, Zima & Co.*, 925 F.2d 1398 (11th Cir. 1991).

Amici maintain that the legal structure adopted by the entity should determine the type of test to apply in as-

certaining the status of the shareholder. If the employer in question is a corporation, the court should apply the *Hyland* approach to determine if a shareholder is an employee. If the employer is a partnership, a court should apply the economic realities test.

A. Courts Should Apply the *Hyland* Approach to a Corporation to Determine Whether a Shareholder, Who Is a Director Actively Involved in the Operation of the Business, Should Be Counted As an Employee

The *Hyland* test, rather than the economic realities test, should be applied when the shareholders voluntarily elect to create a corporation. By incorporating, the shareholders have chosen to insulate themselves from personal liability for the actions of the enterprise. They have chosen to have their compensation paid by the corporation, not by the profits of the enterprise. They have also chosen to relinquish their ownership rights in the name of the corporation. The characteristics commonly associated with a partnership do not exist with a corporation. Since the economic realities test examines those elements associated with a partnership, the test is not an appropriate inquiry for a corporation.

The *Hyland* approach is a more suitable test to evaluate employee status in a professional corporation. In *Hyland*, the employer organized as a professional corporation consisting of five physician-shareholders. The shareholders shared many attributes of partners who contributed capital and divided profits and losses evenly. Yet, they also signed separate two-year employment agreements with the corporation and agreed to be compensated at $60,000.00 annually subject to withholding

tax. Moreover, there was further provision that each physician was required to be a "full-time employee of the company" and turn over all compensation earned for providing professional services of any kind. *Hyland*, 794 F.2d at 795. Despite these characteristics, the firm argued it was not a corporation but more like a partnership and that Hyland was not an employee as defined under the ADEA. The Second Circuit rejected this argument for several reasons. First, the court recognized that while it was true that shareholders of certain professional corporations may have many attributes of partners, it was also true that partnerships organize as corporations to take advantage of tax and employee benefits not otherwise available to a partnership. *Id.* at 798. As the court observed, "those who own shares in a corporation may or may not be employees, [however] they cannot under any circumstances be partners in the same enterprise because the roles are mutually exclusive." *Id.* Under these circumstances, the court concluded there was no reason to ignore the corporate structure of the organization where that structure was freely chosen and established by the shareholders even though the firm shared many attributes as a partnership. *Id.*

More recently, the Tenth Circuit rejected an argument similar to that raised by the Petitioner and the Government involving a closely held corporation. In *Trainor v. Apollo Metal Specialties, Inc.*, 2002 U.S. App. LEXIS 25654 (10th Cir. Dec. 13, 2002), the question before the court was whether a shareholder-director of a closely held corporation should be counted as an "employee" to establish coverage under the ADA. The defendants relied on cases which held that a partner in a partnership was not an employee under Title VII of the Civil Rights Act of 1964, and argued there was little difference between a

shareholder in a closely held corporation and a partner in a partnership to be counted as an "employee." Disagreeing with this argument, the court reasoned that defendants "ignore[d] a hallmark distinction between shareholders and partners, and the differing liability each bears for their entity's duties and obligations." *Id.* at *8. Further, the court distinguished between the economic realities of partnerships and corporations by reasoning ". . . while employees do not assume the risks of loss and the liabilities of their employers, partners are liable for partnership debts and obligations." *Id.*, *citing Wheeler v. Hurdman*, 825 F.2d 257, 274-75 (10th Cir. 1987). For these reasons, the court refused to apply an economic realities test, but instead relied on authorities which addressed whether an employer-employee relationship existed between the shareholder-director and a corporation. *Trainor*, 2002 U.S. App. LEXIS 25654 at *9. The court applied a three-factor test to make this determination: (1) whether the director had undertaken traditional employee duties; (2) whether the director was regularly employed by a separate entity; and (3) whether the director reported to someone higher in the hierarchy. *Id.* The court ultimately concluded there was sufficient evidence that the director had an employment relationship with the corporation in which he performed services and was paid for those services, and appropriately considered him an "employee" for coverage under the ADA. *Id.* at *10.

In the present case, Clackamas consisted of four shareholders who were directors of the corporation. Clackamas bestowed employee status on these physician-shareholders by asking them to sign employment agreements, and as directors, the physician-shareholders entered into an employment relationship with the entity. Although they were also corporate directors, several courts have held

that corporate directors may be considered employees depending upon their positions and responsibilities with the corporation. *EEOC v. Johnson & Higgins, Inc.*, 91 F.3d 1529, 1538-39 (2nd Cir. 1996); *EEOC v. First Catholic Slovak Ladies Ass'n.*, 694 F.2d 1068, 1070 (6th Cir. 1982), *cert. denied*, 464 U.S. 819 (1983). Here, the lower court properly found that the Clackamas physician-shareholders were employees because:

> During the relevant period, in addition to being shareholders and directors of Clackamas, the four physician-shareholders actively participated in the management and operation of the medical practice and literally were employees of the corporation under employment agreements.

Wells, 271 F.3d at 906.

Furthermore, the *Hyland* test is a more appropriate measure to determine whether civil rights laws should apply to a corporation, since the *Hyland* test is arguably the more expansive test which will better protect employee rights. This type of test would be consistent with the broad remedial purposes behind the ADA. *See, e.g.*, 42 U.S.C. § 12101(a). The express statutory language of the ADA confirms the comprehensive, remedial nature of this landmark legislation, which was explicitly directed at eliminating and redressing disability discrimination.[2]

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[2] *See* 42 U.S.C. § 12101(b):

> PURPOSE. —It is the purpose of this chapter—
>
> (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(continued...)

Moreover, as this Court has recently noted, the enforcement scheme of Title I of the ADA is identical to that of Title VII,[3] a nondiscrimination statute whose "broad remedial purposes" have been consistently recognized by this Court.[4]

Because petitioner's shareholders assumed job titles and employment relationships with the corporate entity they had organized, and because the ADA and other civil rights laws are to be applied in an expansive way consis-

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(...continued)

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

[3] *See EEOC v. Waffle House, Inc.*, 534 U.S. 279, 285 (2002) (noting that 42 U.S.C. § 12117 provides for enforcement of the ADA's prohibitions against employment discrimination on the basis of disability through "the same enforcement powers, remedies, and procedures that are set forth in Title VII of the Civil Rights Act of 1964").

[4] *See, e.g., Arizona Governing Comm. for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073, 1090 (1983); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 417-18, 421 (1975); and *Griggs v. Duke Power Co.*, 401 U.S. 424, 429-30 (1971).

tent with their remedial purposes, these physician-shareholders should be counted as employees for purposes of ADA coverage.

B. The Economic Realities Test Should Only Be Applied to a Partnership to Determine If a Shareholder Should Be Counted As an Employee Under Federal Anti-discrimination Laws

Corporations and partnerships have distinct characteristics in their relationships with shareholders. A corporation and its stockholders are generally treated as separated entities under the law. *Burnet v. Clark*, 287 U.S. 410, 415 (1932). Even if an owner of the corporation is a sole shareholder, his status is distinct from the corporation which has different rights and responsibilities due to its different legal status. *Cedric Kushner Promotions v. King*, 533 U.S. 158, 163 (2001). This Court recently observed while interpreting the RICO statute that the "incorporation's basic purpose is to create a distinct legal entity, with legal rights, obligations, powers, and privileges different from those of the natural individuals who created it, who own it, or whom are employees." *Id.* at 163. Thus, when stockholders make the choice to incorporate by electing directors and creating bylaws that form a corporation, such acts will not create any liability beyond the assets of the corporation itself. *United States v. Bestfoods*, 524 U.S. 51, 61-62 (1998). The shareholders become insulated from personal liability for any unlawful acts of the corporation.

Partnership law, however, works differently in relation to the shareholders. The Uniform Partnership Act establishes the following characteristics of a partner: (1) unlimited liability (§ 308), (2) the right to share in the

profits and participate in management subject to agreement between the partners (§ 401(b)(f)), (3) the right and duty to act as an agent of the other partners (§ 301), and (4) shared ownership (§ 202). Unif. Partnership Act (1997); *see also Wheeler v. Hurdman*, 825 F.2d 257, 267 (10th Cir. 1987). Unlike corporations, the partnership liability is not limited to the assets of the entity. Instead, judgments obtained for obligations arising out of the common business enterprise can be fully executed against any partner.

Because partnerships and corporations have different legal relationships with their shareholders, the tests used to identify whether a shareholder is an employee should also differ depending on the entity in question. For instance, shareholders of a corporation do not share many of the characteristics of partners in partnerships, such as unlimited liability, the right to share in profits and shared ownership. The factors typically considered in an economic realities test—such as the power to act for the firm and other principals, individual liability and compensation based on the firm's profits—more appropriately determine whether a shareholder is acting as a partner in a partnership. *See Serapion v. Martinez*, 119 F.3d 982, 990 (1st Cir. 1997), *cert. denied*, 522 U.S. 1047 (1998). Such factors resemble the characteristics of a partner described under the Uniform Partnership Act.

Some courts of appeals recognize the above distinction between a partnership and corporation and apply the economic realities test when addressing a partnership. In *Simpson v. Ernst & Young*, the Sixth Circuit rejected the contention that the firm's designation of a shareholder as a partner prevented him from asserting that he was an employee by status so he could pursue an action under

the ADEA and ERISA. A management committee maintained exclusive control over the hiring and firing of employees and unilaterally determined their compensation. Although the plaintiff was designated a partner by his title, he had no authority to vote or share in the firm's profits and losses. The court, utilizing factors often considered under the economic realities test, concluded that the plaintiff did not qualify as a partner for purposes of the ADEA and ERISA. *Simpson v. Ernst & Young*, 100 F.3d 436 (6th Cir. 1996), *cert. denied*, 520 U.S. 1248 (1997).

A similar set of facts was addressed in *Strother v. Southern California Permanente Medical Group*, 79 F.3d 859 (9th Cir. 1996). The defendant was a large medical partnership consisting of 2,000 partners. The plaintiff sued the partnership under a state anti-discrimination statute. The district court held that the plaintiff could not maintain her action because she was a partner in the entity; however, the Ninth Circuit reversed and found that she had no power nor any duty to participate in the management of the firm as a partner in the normal sense. *Id.* at 867-68. Applying the elements commonly used in the economic realities test to a partnership, the court stated, "[c]ourts must analyze the true relationship among partners, including the methods of compensation, the partner's responsibility for partnership liabilities, and the management structure and the partner's role in that management." *Id.*

These two cases demonstrate a consistent and logical analysis for determining whether a shareholder of a partnership is an employee. When there is no dispute that the employer is operating as a partnership, courts should apply the economic realities test to determine whether an individual is an employee, rather than a

partner, for purposes of coverage under the federal anti-discrimination statutes.

CONCLUSION

Courts should regard shareholders as employees when the shareholders make a voluntary decision to incorporate, and assume job titles and an employment relationship with that entity. A court should not apply an economic realities test to a professional corporation because the factors considered thereunder do not apply to determine whether an employment relationship exists between a shareholder and a corporation. Instead, the choice to incorporate should be the predominant factor in determining whether a shareholder is an employee to establish coverage under the ADA and other federal anti-discrimination statutes.

Because the lower court properly determined that the four physician-shareholders in question were employees, the lower court's decision should be affirmed.

Respectfully submitted,

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